

## HOUSE BILL NO. 71

INTRODUCED BY D. GALLIK

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE APPLICABILITY OF MONTANA'S MINIMUM WAGE AND OVERTIME LAWS; AMENDING ~~SECTION~~ SECTIONS 39-3-405, 39-3-406, AND 39-3-408, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**SECTION 1. SECTION 39-3-405, MCA, IS AMENDED TO READ:**

**"39-3-405. Overtime compensation.** (1) ~~No~~ An employer ~~shall~~ may not employ any ~~of his~~ employee for a workweek longer than 40 hours unless ~~such~~ the employee receives compensation for ~~his~~ employment in excess of 40 hours in a workweek at a rate of not less than 1 1/2 times the hourly wage rate at which ~~he~~ the employee is employed.

(2) ~~No~~ An overtime provision ~~shall~~ does not apply for farm workers.

(3) Employers of students at an amusement or recreational area that operates on a seasonal basis who furnish ~~said~~ the students with board, lodging, or other facilities ~~shall~~ may not employ ~~said the~~ students for a workweek longer than 48 hours, unless ~~such~~ the students receive compensation for their employment in excess of 48 hours in a workweek at a rate of not less than 1 1/2 times the hourly wage rate at which they are employed.

(4) The application of the overtime provisions of subsection (1) to the employment of firefighters and law enforcement officers by the state must be consistent with the Fair Labor Standards Act of 1938, as amended, and consistent with regulations promulgated under the act."

**SECTION 2. SECTION 39-3-406, MCA, IS AMENDED TO READ:**

**"39-3-406. Exclusions.** (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect to:

(a) students participating in a distributive education program established under the auspices of an accredited educational agency;

(b) persons employed in private homes whose duties consist of menial chores, such as babysitting,

1 mowing lawns, and cleaning sidewalks;

2 (c) persons employed directly by the head of a household to care for children dependent upon the  
3 head of the household;

4 (d) immediate members of the family of an employer or persons dependent upon an employer for  
5 half or more of their support in the customary sense of being a dependent;

6 (e) persons who are not regular employees of a nonprofit organization and who voluntarily offer  
7 their services to a nonprofit organization on a fully or partially reimbursed basis;

8 (f) persons with disabilities engaged in work that is incidental to training or evaluation programs  
9 or whose earning capacity is so severely impaired that they are unable to engage in competitive  
10 employment;

11 (g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed  
12 30 days of their employment;

13 (h) learners under the age of 18 who are employed as farm workers, provided that the exclusion  
14 may not exceed 180 days from their initial date of employment and further provided that during this  
15 exclusion period, wages paid the learners may not be less than 50% of the minimum wage rate established  
16 in this part;

17 (i) retired or semiretired persons performing part-time incidental work as a condition of their  
18 residence on a farm or ranch;

19 (j) an individual employed in a bona fide executive, administrative, or professional capacity as  
20 these terms are defined by regulations of the commissioner;

21 (k) an individual employed by the United States of America;

22 (l) resident managers employed in lodging establishments or personal care facilities who, under  
23 the terms of their employment, live in the establishment or facility;

24 (m) an outside salesperson or marketing representative paid on a commission, contract, or salary  
25 basis who is primarily employed in selling or marketing products or services in the food distribution industry  
26 for a food broker, wholesaler, or association;

27 (n) a direct seller as defined in 26 U.S.C. 3508;

28 (o) a person placed as a participant in a public assistance program authorized by Title 53 into a  
29 work setting for the purpose of developing employment skills. The placement may be with either a public  
30 or private employer. The exclusion does not apply to an employment relationship formed in the work

1 setting outside the scope of the employment skills activities authorized by Title 53.

2 (p) a person serving as a foster parent, licensed as a foster care provider in accordance with  
3 41-3-1141, and providing care without wage compensation to no more than six foster children in the  
4 provider's own residence. The person may receive reimbursement for providing room and board, obtaining  
5 training, respite care, leisure and recreational activities, and providing for other needs and activities arising  
6 in the provision of in-home foster care.

7 (q) an employee employed in domestic service employment to provide live-in companionship  
8 services, as defined in 29 CFR 552.6, for individuals who, because of age or infirmity, are unable to care  
9 for themselves as provided under section 213(a)(15) of the Fair Labor Standards Act (29 U.S.C. 213).

10 (2) The provisions of 39-3-405 do not apply to:

11 (a) an employee with respect to whom the United States secretary of transportation has power  
12 to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 31502;

13 (b) an employee of an employer subject to 49 U.S.C. 10501 and 49 U.S.C. 60501, the provisions  
14 of part I of the Interstate Commerce Act;

15 (c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or  
16 natural state;

17 (d) an outside salesperson paid on a commission or contract basis who is primarily employed in  
18 selling advertising for a newspaper;

19 (e) a salesperson, parts person, or mechanic paid on a commission or contract basis and primarily  
20 engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, farm implements,  
21 or replacement parts if the salesperson, parts person, or mechanic is employed by a nonmanufacturing  
22 establishment primarily engaged in the business of selling the vehicles, implements, or replacement parts  
23 to wholesalers or ultimate purchasers;

24 (f) a salesperson primarily engaged in selling trailers, boats, or aircraft if the salesperson is  
25 employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats,  
26 or aircraft to ultimate purchasers;

27 (g) an outside salesperson paid on a commission or contract basis who is primarily employed in  
28 selling office supplies, computers, or other office equipment for an office equipment dealer;

29 (h) a salesperson paid on a commission or contract basis who is primarily engaged in selling  
30 advertising for a radio or television station employer;

(i) an employee employed as a driver or driver's helper making local deliveries who is compensated for the employment on the basis of trip rates or other delivery payment plan if the commissioner finds that the plan has the general purpose and effect of reducing hours worked by the employees to or below the maximum workweek applicable to them under 39-3-405;

(j) an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways that are not owned or operated for profit, that are not operated on a sharecrop basis, and that are used exclusively for supply and storing of water for agricultural purposes;

(k) an employee employed in agriculture by a farmer, notwithstanding other employment of the employee in connection with livestock auction operations in which the farmer is engaged as an adjunct to the raising of livestock, either alone or in conjunction with other farmers, if the employee is:

(i) primarily employed during a workweek in agriculture by a farmer; and

(ii) paid for employment in connection with the livestock auction operations at a wage rate not less than that prescribed by 39-3-404;

(l) an employee of an establishment commonly recognized as a country elevator, including an establishment that sells products and services used in the operation of a farm if no more than five employees are employed by the establishment;

(m) a driver employed by an employer engaged in the business of operating taxicabs;

(n) an employee who is employed with the employee's spouse by a nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in the institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as the employee and the employee's spouse reside in the facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than \$10,000;

(o) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by the employer in the forestry or lumbering operations does not exceed eight;

(p) an employee of a sheriff's department who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1);

(q) an employee of a municipal or county government who is working under a work period not exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(r) an employee of a hospital or other establishment primarily engaged in the care of the sick, disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day period established through either a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 8 hours a day or 80 hours in a 14-day period must be compensated for at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(s) a firefighter who is working under a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative;

(t) an officer or other employee of a police department in a city of the first or second class who is working under a work period established by the chief of police under 7-32-4118;

(u) an employee of a department of public safety working under a work period established pursuant to 7-32-115;

(v) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 1/2 times the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) and if more than half of the employee's compensation for a period of not less than 1 month is derived from commissions on goods and services;

(w) a person employed as a guide, cook, camp tender, or livestock handler by a licensed outfitter as defined in 37-47-101;

(x) an employee employed as a radio announcer, news editor, or chief engineer by an employer in a second- or third-class city or a town;

(y) an employee of the consolidated legislative branch as provided in 5-2-503;

~~(z) an employee of state government employed as a firefighter or law enforcement officer as allowed under the Fair Labor Standards Act of 1938 and regulations found at 29 CFR 553.210 and 29 CFR 553.211;~~

~~(aa)(z) an employee of the state or its political subdivisions employed, at the employee's option,~~  
~~as ON an occasional or part-time employee SPORADIC BASIS in a capacity other than the employee's regular~~  
~~occupation. Only the hours that the employee was employed in a capacity other than the employee's~~  
~~regular occupation may be excluded from the calculation of hours to determine overtime compensation."~~

**Section 3.** Section 39-3-408, MCA, is amended to read:

**"39-3-408. Provisions cumulative.** (1) The provisions of this part ~~shall be~~ are in addition to other provisions ~~now~~ provided by law for the payment and collection of wages and salaries AND ARE APPLICABLE TO EMPLOYEES OF THE STATE OF MONTANA, EXCEPT THAT THE PENALTY PROVISIONS OF 39-3-206 DO NOT APPLY TO MINIMUM WAGE AND OVERTIME CLAIMS THAT ARE SUBJECT TO THE FAIR LABOR STANDARDS ACT OF 1938, IN WHICH CASE LIQUIDATED DAMAGES AS DETERMINED UNDER THE FAIR LABOR STANDARDS ACT OF 1938 APPLY ~~but shall not apply to employees covered by the Fair Labor Standards Act of 1938 except as provided in subsection (2).~~

(2) Sections 39-3-402 and 39-3-404 ~~shall~~ apply to an employee covered by the Fair Labor Standards Act of 1938 if state law provides a minimum wage that is higher than the minimum wage established under federal law."

NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

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